

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
KIM M. SETTLES
Deputy Attorney General
State Bar No. 116945
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2138
Facsimile: (510) 622-2270
Attorneys for Complainant

FILED

Board of Vocational Nursing
and Psychiatric Technicians

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2009-4250

HEATHER IRENE GIANNONI
1941 Terry Road
Santa Rosa, CA 95403
Vocational Nurse License No. 247848

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about February 2, 2010, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number 247848 to Heather Irene Giannoni (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on March 31, 2013, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2878 of the Code states:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee."

5. Section 118, subdivision (b) of the Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

STATUTORY/REGULATORY PROVISIONS

6. Section 2878.5 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022."

7. Title 16, California Code of Regulations, section 2521 states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

9. Norco is the trade name for Hydrocodone Bitartrate and Acetaminophen. It is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as defined in Code section 4022. It is used to control moderate to severe pain.

FIRST CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

10. Respondent has subjected her license to disciplinary action under Code section 2878, subdivision (a) (general unprofessional conduct), in that without authorization and in violation of the law, she obtained and possessed a controlled substance and/or dangerous drug as follows:

A. Respondent was employed as a medical assistant and office manager in Dr. Billie Guerra's medical practice until May, 2008, when she was terminated. Dr. Guerra did not authorize Respondent to call in any prescriptions after she was terminated. On or about October 21, 2009, Respondent called in a prescription for Norco (120 tablets) with three refills to Safeway Pharmacy in Santa Rosa, California, and falsely represented herself as "Melissa" from Dr. Guerra's office. Melissa Pacheco, office manager for Dr. Guerra, never called in a

1 prescription for Respondent to any pharmacy. Dr. Guerra did not authorize the prescription for
2 Norco with three refills.

3 B. The prescription for Norco, was picked up from the Safeway Pharmacy on
4 October 30, 2009. Refills of Norco were picked up on November 24, 2009; January 15, 2010;
5 and March 18, 2010.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Possession of Controlled Substance)**

8 11. Respondent's conduct as set forth in paragraph 10, above, constitutes possession of a
9 controlled substance, and is cause for disciplinary action pursuant to Code section 2878, in
10 conjunction with 2878.5, subdivision (a).

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Commission of Dishonest Act)**

13 12. Respondent's conduct as set forth in paragraph 10, above, constitutes commission of a
14 dishonest act that is substantially related to the qualifications, functions, or duties of a licensed
15 vocational nurse, and is cause for disciplinary action pursuant to Code section 2878, subdivision (j).

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //


28 //

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number 247848, issued to Heather Irene Giannoni;
2. Ordering Heather Irene Giannoni to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: April 26, 2011.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

SF2011900217
90185713.doc